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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 182

MASSACHUSETTS PROTECTIVE ASSOCIATION, INC.,
Petitioner

v.

JOSEPH W. BUCHANAN, *Respondent*

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Joseph W. Buchanan, respondent, by his counsel, hereby opposes the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

COUNTERSTATEMENT OF THE MATTERS INVOLVED

Generally, the statement of facts commencing on Page 2 of the petition is correct. However, respondent takes issue with the statement found on Page 2 and repeated on Page 6 of the petition that the policy provisions expressly reduced indemnity 50 per cent

after the insured reach sixty years of age. Just what the policy read as a whole was the entire subject matter of the controversy in the United States Court of Appeals, and that Court, applying the ordinary rules of interpretation, held that the policies did not expressly reduce the indemnities by 50 per cent under the facts of this case, because respondent became permanently and totally disabled prior to reaching age sixty.

Respondent also questions the relevancy of the statement that five judges in various courts below agreed with petitioner, as stated on Page 6 of the petition. The United States Court of Appeals had the duty to consider legal points irrespective of rulings below. The important fact is that the majority of the United States Court of Appeals ruled in favor of the respondent. If we are going to count noses of judges, however, it may be pointed out that in the United States Court of Appeals, which contains nine judges, one panel of three judges unanimously granted the appeal after an oral hearing, another panel of three judges decided the case in favor of the respondent on the merits, and the entire United States Court of Appeals, sitting in banc, denied a petition for rehearing, in which this "nose counting" point was urged.

REASONS FOR DENYING THE WRIT

Introduction

The instant case does not present the relatively unusual type of decision which is normally reviewed by the granting of a petition for a writ of certiorari. See this Honorable Court's Rule 19. Broken down to its basic essential, the instant case is nothing more than the interpretation by a court of competent jurisdiction

of an insurance policy, hundreds, and probably thousands of such opinions being handed down by various courts throughout these United States during the course of a year.

PETITIONER'S POINTS

The three points which the petitioner has urged as supporting the granting of the writ are without special merit.

Point I

On pages 7 and 8 of its petition, petitioner cites five decisions of this Honorable Court; all but one of which are relatively old decisions. Every one of the decisions cited recognizes the basic rule in the interpretation of insurance policies, that any doubt or ambiguity shall be resolved against the insurance company, on which the Court of Appeals relied in the instant case.

In the cited case of *Liverpool, etc. Ins. Co.* v. *Kearney,* 180 U.S. 132, decided by this Court in 1901, this Court said, 180 U.S. at 136:

> "To the general rule there is an apparent exception in the case of contracts of insurance; namely, that where a policy of insurance is so framed as to leave room for two constructions, the words used should be interpreted most strongly against the insurer. The exception rests on the ground that the company's attorneys, officers or agents prepared the policy, and it is its language that must be interpreted. *First Nat. Bank* v. *Hartford F. Ins. Co.,* 95 U.S. 673, 678, 679, 24 L. ed. 563, 565; *Moulor* v. *American L. Ins. Co.,* 111 U.S. 335, 341, 28 L. ed. 447, 449, 4 Sup. Ct. 466."

This Honorable Court then proceeded to do just that with respect to the fire insurance policy under con-

sideration, resolving all doubts and ambiguities against the insurance company, and confirmed the judgment which had been entered below in favor of the insured.

Not one of the decisions of this Honorable Court cited on pages 7 and 8 of the petition are in point with respect to the facts. Each one construed a different policy containing very different provisions.

The three Court of Appeals opinions which are cited from the Second, Third and Fourth Circuits as well as the *Continental Casualty Company* case from the District of Columbia Circuit, cited on page 9 of the petition, are likewise very different with respect to the facts.

The opinion below is entirely in accord with, and cites in footnote 2 (Page 4a of Appendix of the petition for certiorari) the case of *Stroehman* v. *Mutual Life Co.,* 300 U. S. 435, a later opinion than any cited by petitioner, and is also in accordance with the general rules for interpretation of insurance policies recognized in the *Stroehman* case, the earlier opinions of this Honorable Court, and those of the Courts of the District of Columbia, *Mutual Life Insurance Co.* v. *Hurni Packing Co.,* 263 U. S. 167, 31 A.L.R. 102; *Yeaton* v. *Fry,* 5 Cranch 335 (U. S. 1809 on appeal from Dist. of Col.); *Phoenix Mut. Ins. Co.* v. *Flynn,* 83 U. S. App. D. C. 381, 171 F. 2d 982; *Hayes* v. *Home Life Ins. Co.,* 83 U. S. App. D. C. 110, 168 F. 2d 152; *Penn. Ind. Fire Corp.* v. *Aldridge,* 73 App. D. C. 161, 117 F. 2d 774; *Maye* v. *New Amsterdam Casualty Co.,* 40 App. D. C. 249 *cert. denied* 238 U. S. 624; *Heilman* v. *American Casualty Co.,* 81 A. 2d 463 (Mun. App. D. C.) *affd.* 90 U. S. App. D. C. 171, 194 F. 2d 348.

It is submitted that the decision below is entirely in accord with applicable decisions of this Court and

is not in conflict with the decisions of other Circuits or of the District of Columbia

Point II

It is submitted that the Court below has construed the terms of the insurance contracts at issue in a correct manner. The argument set forth in Point II of petitioner's brief, that the Court of Appeals has made a new contract, assumes that the Court of Appeals decision is wrong. It is submitted, that for the reasons given in the opinion below, it is correct.

Moreover, the applications for these policies were executed in South Carolina, and the policies were delivered to the insured there, having been mailed to him by the Company (R. 25, 31, 34-37). The law of South Carolina is even more favorable to insured, if anything, than that of the District of Columbia, the highest court of that jurisdiction holding that a clause will be construed in favor of the insured and against the company "when there existed the least doubt as to the meaning of the language employed." *Beckett* v. *Jefferson Standard Life Insurance Company,* 165 S. C. 581, 164 S.E. 130, quoting with approval from *Bolt* v. *Life Insurance Company,* 156 S. C. 117, 152 S.E. 776. See also *Harvey* v. *Union Central Life Insurance Company,* 45 F. 2d 78 *cert. denied* 283 U. S. 829 (on appeal from the Eastern District of South Carolina).

The application was accepted in Massachusetts, and the policies were executed and dated there (R. 21, 24, 27, 30, 35, 37). If they be held to be Massachusetts contracts, the law of that state also is probably at least as favorable in this respect as in the District of Columbia. The Supreme Judicial Court of Massa-

chusetts has said, "Where the language is of doubtful meaning every doubt is to be resolved against the insurer and in favor of the insured." *Bouvier* v. *Craftsman Ins. Co.*, 300 Mass. 5 at 7, 13 N.E. 2d 619.

The argument set forth in Point II also assumes that either a South Carolina Court or a Massachusetts Court would have decided this case differently than the Court below. It is submitted, under the authorities just cited, that the opinion would be in favor of the respondent in both those jurisdictions.

Finally, it might be suggested that were this Honorable Court to review the opinions of the various Courts of Appeal every time one of the parties felt that a contract between private parties had not been properly construed, the docket of this Honorable Court would be hopelessly overburdened, and the decision of important national issues seriously delayed.

Point III

Point III of petitioner, set forth on pages 10 and 11 of the petition, likewise bases its argument on the fallacious premise that the Court of Appeals flagrantly disregarded the policy provisions. A reading of the opinion will indicate that the Court carefully considered these provisions and construed them in accordance with existing principles of insurance law.

THE OPINION BELOW IS IN ACCORD WITH EXISTING LAW

Finally, it should be pointed out that not one case from any jurisdiction has been cited by petitioner holding, on similar facts, contrary to the decision of the United States Court of Appeals below. On the other hand, as it set forth in the opinion below, two

cases on similar facts, the cases of *Hobson* v. *Mutual Benefit Health & Accident Ass'n,* 99 Cal. App. 2d 330, 221 P. 2d 761, and *Boillot* v. *Income Guaranty Co.,* 231 Mo. App. 531, 102 S.W. 2d 132, are in accord with the decision below. The decision, then, can scarcely be characterized as a flagrant departure from existing law, as petitioner blandly assumes throughout its petition. Rather it is in accord with the only decisions found by either party, or by the Court of Appeals.

CONCLUSION

The instant case is not of the kind giving rise to those "special and important reasons" required by this Honorable Court's Rule 19 before a petition for a writ of certiorari will be granted. The petition should be denied.

Respectfully submitted,

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